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**ORDINANCE NO. O2013-10**

AN ORDINANCE OF THE CITY OF WILDWOOD, FLORIDA, CONCERNING SYNTHETIC DRUGS, PROVIDING FOR "SYNTHETIC DRUGS", PROVIDING FOR PURPOSE, FINDINGS AND LEGISLATIVE INTENT; PROVIDING FOR DEFINITIONS; PROVIDING FOR THE PROHIBITION ON THE POSSESSION, SALE, OFFER FOR SALE OR DISPLAY OF SYNTHETIC DRUGS OR SYNTHETIC STIMULANTS AND CERTAIN LEGAL PRESUMPTIONS CONCERNING SAME; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED, by the City Commission of Wildwood, Florida, as follows:

**SECTION 1. Purpose, findings and legislative intent.**

It is the purpose and intent of this division to preserve and protect the public health, safety and welfare of all city citizens and visitors. The distribution and use of synthetic drugs currently marketed under names like "bath salt," "spice" or "potpourri" has a substantial and detrimental impact on the public health, safety and welfare of the city and it is therefore necessary to identify and control such synthetic products that mimic currently illegal drugs. These new products are psychoactive chemical compounds frequently labeled and marketed under the aforesaid names or some other seemingly innocuous product name and usually include a disclaimer on the package such as "not for human consumption." These substances have in fact been manufactured for human consumption with synthetic chemical compounds that are intended to mimic the effects of amphetamines, cocaine, marijuana and other controlled substances under federal and state laws. As distinguished from these standard everyday products containing synthetic stimulants marketed as safe and legal alternatives to illegal drugs, but are often more potent and dangerous than illegal drugs and are known to produce panic attacks, dangerous hallucinations, delusions, paranoia, psychosis, suicidal thoughts, high blood pressure, anxiety, increased heart rate, kidney failure, heart failure, increased hostility, intense addiction, and numerous reported deaths. According to the American Association of Poison Control Centers received more than 6100 calls about bath salt drugs in 2011, up from 300 for the year before, and more than 1700 calls in the first half of 2012. Products containing these synthetic stimulants are particularly attractive packages at convenience stores as well as with appealing product names. The United States Drug Enforcement Agency (DEA) has previously exercised emergency scheduling authority to ban some synthetic chemical compounds used in psychoactive bath products and in 2012, the DEA extended its ban. New contraband synthetic drugs are being created which are not controlled by Federal or State law but which have a potential for abuse similar to or greater than that for controlled substances. The new substances, sometimes classified as "controlled substance analogs" under Federal and State law, can be designed to

provide a desired pharmacological effect and to evade controlling statutory provisions more rapidly than they can be identified and controlled by action of Federal agencies. Congress, State Legislature, or the State Attorney General. The threat posed by these synthetic drugs is immediate and therefore necessary to identify, control, and prohibit the synthetic drugs that mimic illegal drugs.

SECTION 2. Definitions. For purposes of this division, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

- a) "Spice/synthetic cannabinoids/synthetic marijuana" shall mean any aromatic plant material in granular, loose leaf or powder form, or in liquid or as a food additive, or any herbal-incense-type stimulant or hallucinogen product, when the label is in any way false or misleading or which does not contain a label specifying (1) the identity of the commodity and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Black Mamba, Bombay Blue, Fake Weed, Genie, Spice, Zohai, K2, K3, Smoke, Pot-Pourri, Buzz, Spice 99, Voodoo, Pulse, Hush, Mystery, Earthquake, Stinger, Ocean Blue, Serenity, Chronic Spice, Spice Gold, Spice Silver, Skunk, Mr. Nice Guy, Mr. Happy, K3 Legal, Sence, Smoke, Chill X, Earth Impact, Galaxy Gold, Space Truckin, Solar Flare, Moon Rocks, Aroma, Scope, Sky High, Atomic, G-20, Guerrilla Warfare, Makes Scents, g-13, Tiger Shark, California Dreams, Dank, Bullet, Mind Trip, Voodoo Child, Jazz, Nightlights, Matrix, Hypnotiq, AK47, Maui Wowie, Cloud 9, Daylights, Joker, Dead Man Walking, Brain Storm, Soul Sence, Kush, Kush Mania, Dragons Fire, Lucid, Mad Hatter, Scooby Snax, D-ZL, OMG, Demon, Barely In, Pineapple Express, Hayze.
- b) "Bath Salts/synthetic cathinones/synthetic stimulants" shall mean any crystalline or powder product in crystalline, loose powder, block, tablet, or capsule form, or any stimulant-type product, when the label is in any way false or misleading, or which does not contain a label specifying (1) the identity of the commodity, and (2) the name and place of business of the manufacturer, packer, or distributor. Street names for these products include, but are not limited to: Bliss, Blue Silk, Cloud Nine, Drone, Energy-1, Ivory Wave, Lunar Wave, Meow Meow, Ocean Burst, Pure Ivory, Purple Wave, Red Dove, Snow Leopard, Stardust, Vanilla Sky, White Dove, White Knight, White Lightening, Blizzard, Bonzai Grow, Charge Plus, Charlie, Euphoria, Hurricane, Lunar Wave, Ocean, Pixie Dust, Posh, Scarface, Lovely Dovey, Aura, MDPV, MDPK, MTV, Maddie, Hurricane Charlie, Black Rob, Super Coke, PV, Peeve, Meph, Drone, MCAT.
- c) "Drug" shall mean an article that is intended to affect the function of the body of humans.

- d) "Misbranded drug" means a drug that violates Section 499.007, Florida Statutes, including but not limited to drugs for which (1) the label is in any way false or misleading; (2) the label does not bear the name and place of business of the manufacturer, repackager, or distributor of the finished form of the drug; (3) the label does not bear adequate directions for use; or (4) the label does not bear adequate warnings against use.
- e) "Illicit synthetic drugs" shall include spice, synthetic cannabinoids, synthetic marijuana, bath salts, synthetic cathinones, synthetic stimulants, or misbranded drugs.
- f) "Drug paraphernalia" means, other than devices to ingest or inject prescription drugs, any object used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, or other illicit drugs or controlled substances into the human body, including but not limited to: metal, wooden, acrylic, glass, stone, plastic or ceramic pipes (with or without screens, permanent screens, hashish heads or punctured metal bowls); water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips, miniature cocaine spoons and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers. In determining whether an object is drug paraphernalia, a court may consider any of the factors enumerated in §893.164, Fla. Stat. ("Determination of paraphernalia").
- g) "Minor" means person under 18 years of age.
- h) "Premises" means any part of the buildings located on a lot or parcel of land utilized in whole or part for the commercial sale or commercial display of drug paraphernalia.

**SECTION 3. Possession, Provision, Sale or Distribution of Synthetic Drugs Prohibited.**  
It is unlawful for any person to possess, provide, sell, offer to sell, display or distribute, within the City of Wildwood, any illicit synthetic drug as defined in this ordinance.

- a) **Factors That May be Disregarded and/or Considered in Determining Violation.** In determining whether a product or sale is prohibited by this ordinance, statements on package labeling such as "not for human consumption" may be disregarded when other relevant factors (viewed alone or in totality) indicate that the product is intended to be consumed or ingested by humans, or is a product regulated by this ordinance. Other relevant factors that may be used to determine whether a product or sale is prohibited by this ordinance include, but are not limited to: verbal or written representations at the point of sale regarding the purpose, methods, use, or effect of the product; aspects of the packaging or labeling suggest the user will achieve a "high," euphoria, relaxation, mood enhancement, or that the product has other effects on the body; the cost of the product is disproportionately

higher than other products marketed for the same use; the product contains a warning label stating or suggesting that the product is in compliance with state laws regulating controlled substances; the product's name or packaging uses images or slang referencing an illicit street drug; illicit or underground methods of sale or delivery are employed by the seller or provider; the product resembles an illicit street drug such as cocaine, methamphetamine, or marijuana.

- b) Exemptions. This provision of this section does not apply to any product that is specifically excepted by, or regulated within, the Florida Comprehensive Drug Abuse Prevention and Control Act (Ch. 893, Fla. Stat.) Or the Federal controlled Substances Act (21 USC §§81 et seq.); is a food product, drug, dietary supplement, cosmetic, or other substance regulated by the Food and Drug Administration (FDA) and in compliance with the agency's requirements; is regulated by and in compliance with the labeling requirements of the Federal Trade Commission; is regulated by and in compliance with the Federal Fair Packaging and Labeling Act; is regulated by and in compliance with the Federal Food, Drug and Cosmetic Act; is regulated by and in compliance with the regulations of the Florida Department of Agriculture and Consumer Services; or is a tobacco product regulated by and in compliance with the regulations governing the tobacco industry enforced by the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco. For the purposes of this section, products that are not subject to regulation by the act or agencies listed above are not exempt unless the product is specifically exempt from regulation; mere "non-regulation" by these acts without a specific regulatory exemption will not render a product exempt under this section.

SECTION 4. Sale of Certain Products for Human Consumption Prohibited. It is unlawful for any person to provide or sell a product for human consumption when the product is labeled "not for human consumption" or contains similar warnings.

SECTION 5. Restrictions on businesses that sell or display drug paraphernalia; signage required; unaccompanied minors prohibited.

- a) No person in control of the premises of any place of business selling or displaying drug paraphernalia shall allow or permit any person under the age of 18 to enter or remain on the premises unless the minor person is accompanied by one of his or her parents or by his or her legal guardian.
- b) Such premises must prominently display a sign (approved by or provided by City of Wildwood) posted at the entrance, stating that drug paraphernalia is located within the premises, and prohibiting persons under 18 from entering the establishment without their parent or guardian.

- c) Exemption: These restrictions do not apply to premises (1) that prohibit the entry of persons under the age of 18; or (2) premises where sale and display of drug paraphernalia is located in a separate room from which persons under 18 are excluded without a parent or guardian, and provided that a sign (approved by the City) is posed at the entrance to the room, stating that drug paraphernalia is located within that room, and prohibiting persons under 18 from entering the room without their parent or guardian. The room must contain a door, which is to remain closed except when in active use to enter or exit the room. The door shall contain a window of a minimum size of 18" x 18", located at a minimum height of 5' from the floor. This window shall remain unobstructed to allow law enforcement officers and persons in charge of the premises to view persons inside the room without the necessity of entry into the room. This provision is not intended to require permission or special authority or a search warrant for law enforcement officers to enter the room.

SECTION 6. Sale or provision of paraphernalia to minors prohibited; possession by minors prohibited. No person shall sell or provide drug paraphernalia to any person under the age of 18. No person under the age of 18 shall possess drug paraphernalia.

- a) Defenses. A person who violates the provisions of this section shall have a defense to any civil action for violation of these provisions if, at the time of the violation: (1) the person under 18 falsely evidenced that he or she was at least 18 years of age; (2) the appearance of the person was such that an ordinarily prudent person would believe him or her to be at least 18 years of age; (3) the violator carefully checked one of the following forms of identification with respect to the minor: a driver's license or an identification card issued by the this state or another state of the United States, a passport, or a United States Uniformed Services Identification Card; and (4) the violator acted in good faith and in reliance upon the representation and the appearance of the person under 18.

SECTION 7. Enforcement. This ordinance may be enforced by any law or code enforcement officer. Any products found in violation of this section may be seized and held by the enforcing entity as evidence to be used in any further proceeding.

SECTION 8. All ordinances or parts of ordinances in conflict herewith, be, and the same are hereby repealed.

SECTION 9. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a Court or competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of said Ordinance.

SECTION 10. Effective Date. This Ordinance shall take effect immediately upon its final adoption by the City Commission.


PASSED AND ORDAINED this 22<sup>nd</sup> day of April, 2013, by the City


Commission of the City of Wildwood, Florida.

CITY COMMISSION  
CITY OF WILDWOOD, FLORIDA

SEAL

ATTEST:

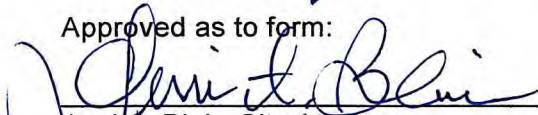
  
Joseph Jacobs, City Clerk

  
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Ed Wolf, Mayor

First Reading: March 25, 2013

Second Reading: April 22, 2013

Approved as to form:

  
Terri A. Blair, City Attorney

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